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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 IN RE HIGH-TECH EMPLOYEE
14 ANTITRUST LITIGATION

15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS

Case No. 3:11-cv-2509-LHK

**DEFENDANTS' JOINT
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
SUPPLEMENTAL MOTION IN SUPPORT
OF CLASS CERTIFICATION AND
RELATED DOCUMENTS**

Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendants hereby jointly move to seal (i) portions of Defendants Opposition to Plaintiffs' Supplemental Motion for Class Certification ("Defendants' Opposition Brief"), (ii) all or portions of certain Exhibits to the Declaration of Christina Brown filed in support of Defendants' Opposition, (iii) portions of the Supplemental Expert Report of Kevin Murphy and Exhibits thereto ("Supplemental Murphy Report"), (iv) portions of the Expert Report of Kathryn Shaw, Ph.D ("Shaw Report"); and (vi) all or portions of certain Exhibits to the Declaration of Lin Kahn filed in support of the Expert Report of Kathryn Shaw; (collectively, "Defendants' Opposition Papers"). Proposed redacted versions will be filed on ECF and proposed redacted versions of Defendants' Opposition Brief, the Supplemental Murphy Report, and the Shaw Report are also attached as Exhibits 1-3 to this Motion. A proposed order is attached as Exhibit 4.

The information Defendants seek to seal has been designated Confidential or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Defendants are filing corresponding declarations in support of their respective sealing requests.

I. LEGAL STANDARD

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, *inter alia*, the protection of "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has "carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion," where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 WL 902550, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) ("[A] 'particularized showing' under the 'good cause' standard of Rule 26(c) will 'suffice[] to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.'"); *see also Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2009) ("In light of the weaker public interest in nondispositive materials, we apply the 'good cause' standard when parties wish to keep them under seal.").

1 **II. GOOD CAUSE EXISTS TO SEAL DEFENDANTS' CONFIDENTIAL
2 INFORMATION**

3 The proposed redacted portions of Defendants' Opposition Papers contain confidential
4 and commercially sensitive information about employee compensation, including Defendants'
5 compensation data as well as information that reflects certain Defendants' internal decision-
6 making regarding their business strategies related to compensation and internal assessments of
7 their and other employers' competitive position in the labor market. Defendants also seek to keep
8 under seal those materials that reflect compensation practices, strategies and policies; recruiting
9 and hiring data, practices, strategies and policies; and personal identifying information of
10 employees or candidates. Defendants designated the foregoing information "Confidential" or
11 "Attorneys Eyes Only" under the Protective Order.

12 As each of Defendants' separately filed declarations demonstrate, Defendants kept the
13 redacted information confidential and the public disclosure of this information would cause each
14 Defendant harm by giving third-parties (including individuals responsible for competitive
15 decision-making) insights into confidential and sensitive aspects of each of the Defendants'
16 strategies, competitive positions, and business operations, allowing these third-parties to
17 potentially gain an unfair advantage in dealings with and against each of the Defendants. A
18 significant portion of the sealed information is employee compensation data. This type of
19 information is regularly sealed because of its confidential and private nature. *See Renfro v. Unum*,
20 No. 09-2661, 2010 BL 104197 (N.D. Cal. May 10, 2010) (granting a motion to seal
21 records containing plaintiffs' salary information); *Nettles v. Farmers Ins. Exch.*, No. C06-5164,
22 2007 WL 858060, at *2 (W.D. Wash. Mar. 16, 2007) (holding that salary review notices for third
23 parties "who have not chosen to have their salary history placed into the public record" could be
24 sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-1043, 2010 WL 3155900 at *1 n.1 (W.D. Okla. Aug.
25 09, 2010) (noting that portions of summary judgment materials were filed under seal because they
26 contained "confidential salary information.").

27 Similarly, compensation policies, practices and decisions are routinely subject to a
28 sealing order. *In re Wells Fargo Loan Processor Overtime Pay Litigation*, No. C 07-01841, 2008
WL 2397424 at *5 (N.D. Cal. June 10, 2008) (noting that a

“compensation policy” was filed under seal); *Hertz Equip. Rental Co. v. Useda*, No. CV-10-4953, 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010) (granting a temporary restraining order to enjoin a former employee from using a company’s “confidential and/or trade secret employee compensation information”).

In addition, good causes exists to seal confidential information relating to a company’s internal business, recruiting or hiring practices, strategies and policies, including confidential analyses of a company’s market position. See Fed. R. Civ. Proc. 26(c)(1)(G) (permitting sealing of “a trade secret or other confidential research, development, or commercial information”); *Krieger v. Atheros Commc’ns, Inc.*, No. 11-CV-00640, 2011 WL 2550831 at *1 (N.D. Cal. June 25, 2011) (holding that a company could seal a presentation from its investment adviser that contained “sensitive and confidential information, including long-term financial projections, discussions of business strategy, and competitive analyses”); *Network Appliance, Inc. v. Sun Microsystems Inc.*, Case No. C-07-06053, 2010 WL 841274 at *2 (N.D. Cal. Mar. 10, 2010) (sealing “internal information regarding [defendant’s] business strategies and opportunities that were not widely distributed”); *see also TriQuint Semiconductor, Inc. v. Avago Techns. Ltd.*, No. CV 09-531, 2011 WL 6182346 at *5 (D. Ariz. Dec. 13, 2011) (granting motion to seal “market analysis information,” under “compelling” reason standard applicable to dispositive motions, including a “spreadsheet tracking information regarding potentially competitive products,” and other business strategy documents, such as information relating to “product competitiveness, and market and technological opportunities and risks”).

Good cause also exists for sealing the identities and personal contact information of specific employees or applicants that are contained in Defendants’ Opposition Papers. These employees or applicants have not sought to make their identities known or placed in the public record. *Nettles* at *2 (holding that the interests of private parties outweighed the public’s right of access with respect to information pertaining to third party salary and employment separation information).

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court order the

1 requested portions of Defendants' Opposition Papers to be placed under seal. In accordance with
2 Civil Local Rule 79-5(d), General Order 62, the Court's Civil Standing Order Regarding Motions
3 to File Under Seal, and Dkt. No. 269, proposed redacted versions of the documents sought to be
4 maintained under seal and a proposed order granting Defendants' Administrative Motion to Seal
5 are attached to this Motion. Non-redacted copies Defendants' Opposition Papers are being served
6 on Plaintiffs' counsel and will be lodged with the Clerk in hard copy. A copy showing proposed
7 redactions highlighted in yellow will also be lodged with the Clerk in hard copy.

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27 **ATTESTATION:** The filer attests that concurrence in the filing of this document has been
28 obtained from all signatories.